

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

1214 1st Avenue

**DPD Interpretation No. 15-002E
(DPD Project No. 3023333)**

Background

This interpretation was requested by attorney Courtney A. Kaylor on behalf of her client Total Outdoor Corporation and involves an on-premises sign permit issued to Seneca Market for a wall sign at 1214 1st Avenue. The on-premises wall sign is nonconforming as to maximum area allowed under current regulations. The question for interpretation is whether the nonconforming area of the existing on-premises wall sign may be maintained even if a new on-premises wall sign permit for the sign is obtained by a different entity. The current content of the sign is not at issue in this interpretation.

Findings of Fact

1. The subject property is addressed in Department of Planning and Development (DPD) records as 1214 1st Avenue. According to the Geocortex land use map maintained by DPD, the property is described as a portion of Lot 4, Lot 5, and Lot 8, Block 6, AA Denny's 2nd Addition. The entire building is identified as 1206 1st Avenue, while the sign has been leased by the tenant at 1214 1st Avenue.
2. The property is zoned DMC 240/290-400: Downtown Mixed Commercial, with height limits as described in the Seattle Municipal Code (SMC) 23.49.008.A.3 and uses described in SMC 23.49.042.
3. The subject on-premises wall sign is located on the southeast facing wall of the existing building of retail stores on the property, including Seneca Market. Seneca Market submitted plans to DPD to obtain an on-premises wall sign permit that would allow them to advertise T-Mobile cell phone services. Those plans were approved under Permit No. 6274195 on May 24, 2011, with dimensions of 50 feet by 27 feet for an area of 1,350 square feet. The permit, applied for on February 9, 2011, described installation of a non-illuminated wall sign on the existing vinyl frame. Permit No. 6274195 as issued to Seneca Market as the business establishment using the sign and tenant of the building. There is nothing in the record to indicate that the business establishment or tenancy in the building has changed since Permit No. 6274195 was issued; nor is there evidence in the

record that the size of the sign has been expanded or extended since Permit No. 6274195 was issued.

4. Seattle Municipal Code (SMC) Section 23.55.034 regulates on-premises signs in Downtown zones, including the DMC zone. Section 23.55.034.D sets out the requirements for on-premises signs allowed in the DMC zone. According to Section 23.55.034.D.2.a, the “maximum area of on-premises wall signs is 672 square feet.”

5. Section 23.84A.036 defines “sign, on-premises” as follows:

“sign, on premises” means a sign or sign device used solely by a business establishment on the lot where the sign is located that displays either: (1) commercial messages that are strictly applicable only to a use of the premises on which it is located, including signs or sign devices indicating the business transacted, principal services rendered, goods sold or produced on the premises, name of the business, and name of the person, firm or corporation occupying the premises; or (2) noncommercial messages. For the purposes of this definition, “business transacted, principal services rendered, goods sold or produced on the premises” does not include: (a) the sale or donation of a gift card, gift certificate, coupon or other document that can be exchanged in part or whole for an item or good that is not directly sold or produced or a service rendered where the gift card, gift certificate, coupon or other document is sold or donated; or (b) access by phone, computer or any other device to allow a person to obtain an item or good that is not directly sold or produced or a service rendered where the access by phone, computer or other device is offered. This definition does not include signs located within a structure except those signs oriented so as to be visible through a window.

6. Section 23.84A.036 also defines “sign, wall” as follows:

“Sign, wall” means any sign attached to and supported by a wall of a structure, or projected on or onto a wall of a building or structure, or suspended from the roof of a building or structure, with the exposed face of the sign on a plane approximately parallel to the plane of the wall, or any sign painted directly on a building facade.

7. The current 672 square foot maximum area limit for each on-premises wall sign in Downtown zones was established by Seattle City Ordinance No. 124457, effective April 28, 2014, which provides, in part:

AN ORDINANCE relating to the regulation of wall signs, amending Sections 23.55.030, 23.55.034, 23.55.036, 23.84A.036 and 23.90.018 of the Seattle Municipal Code; enacting and amending standards for on-premises wall signs in commercial, Seattle Mixed, industrial and downtown zones; clarifying the definition of wall signs and on-premises signs.

WHEREAS, Seattle Municipal Code Chapter 23.55 ("Sign Code") regulates signs for the purposes set out in Section 23.55.001; and

WHEREAS, the intent of Seattle's Sign Code is to "protect the public interest and safety," including reducing driver distraction, to "encourage the design of signs that attract and invite rather than demand the public's attention, and to curb the proliferation of signs," all while providing opportunities for communicating information; and

WHEREAS, the Sign Code authorizes signs that are in the public interest, such as on-premises signs; and

WHEREAS, under the Sign Code, on-premises signs are authorized to carry messages about a business activity, product or service offered on the premises where the sign is located or non-commercial messages; and

WHEREAS, the Sign Code prohibits off-premises signs displaying messages about a business activity, product or service not available on the premises where the sign is located, except for a limited number of registered billboards; and

WHEREAS, the Comprehensive Plan's Urban Design Policies for Downtown seek to regulate signs to "reduce visual clutter," "enhance the appearance of downtown," and "generally discourage signs not oriented to persons at the street level"; and

WHEREAS, it is the City of Seattle's ("City") intent that any complete on-premises wall sign permit application that is received by the Department of Planning and Development ("DPD") prior to the effective date of this ordinance for a sign that is larger than 672 square feet in area, and subsequently approved by DPD, shall be considered nonconforming to the new area limit and allowed to remain subject to Sections 23.42.112 and 23.84A.036 of the Seattle Municipal Code; and

WHEREAS, it is the City's intent that all permitted on-premises signs must conform to the definition of "sign, on-premises" in Section 23.84A.036 of the Seattle Municipal Code, as amended by this ordinance, by the effective date of this ordinance, except where DPD has previously and expressly approved (1) the sale or donation of gift cards, gift certificates, coupons or other documents that can be exchanged in part or whole for an item or good that is featured on an on-premises sign but not directly sold or produced or a service rendered where the gift card, gift certificate, coupon or other document is sold or donated; or (2) providing access to a phone, computer or any other device to allow a person to obtain an item or good that is featured on an on-premises sign but not directly sold or produced or a service rendered where the access by phone, computer or other device is offered. Additionally, the business establishment associated with the on-premises sign permit must be able to document that (a) it is the same business establishment that received the original permit for the on-premises sign and (b) the copy displayed or the item or good featured on the sign is the same as that shown on the plans associated with the original approved sign permit. Business establishments that are unable to meet the above-described standards (a) and (b) must conform their on-premises signs to the definition of "sign, on-premises" in Section 23.84A.036 of the Seattle Municipal Code, as amended by

this ordinance, by the effective date of this ordinance; NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

* * *

Section 3. Section 23.55.034 of the Seattle Municipal Code, last amended by Ordinance 124378, is amended as follows:

23.55.034 Signs in downtown zones

D. On-premises Signs.

2. There ~~((shall be))~~ is no maximum area limit~~((s))~~ for on-premises signs, except ~~((for signs))~~ as follows:

a. The maximum area for each wall sign is 672 square feet; and

* * *

8. Section 23.84A.0256 defines "Nonconforming to development standards" in part as follows:

a structure, site or development that met applicable development standards at the time it was built or established, but that does not now conform to one or more of the applicable development standards.

9. Section 23.42.102 provides in part as follows:

Any use or development for which a permit was obtained is considered to be established.

10. Section 23.40.002.B provides that once a structure (including a sign) is established or constructed in conformity to the regulations of the Land Use Code, it cannot be changed in ways that are not conforming to the applicable regulations.

11. Section 23.42.112.A provides in part as follows:

A structure nonconforming to development standards may be maintained, renovated, repaired or structurally altered but may not be expanded or extended in any manner that increases the extent of nonconformity or creates additional nonconformity.

Conclusions

1. Prior to the April 28, 2014 amendment of the Seattle Land Use Code, which limited the area of on-premises wall signs to 672 square feet (Findings of Fact No. 7), the Code did not provide any specific area limits for the size of on-premises wall signs. On May 24, 2011, DPD issued on-premises wall sign permit 6274195 to Seneca Market for a wall sign

with an area of 1,350 square feet. The 1,350 square foot sign area conformed to the Code at the time the permit was issued and the sign is stalled.

2. On-premises signs are permitted outright in DMC zones pursuant to Section 23.55.034 (Finding of Fact No. 4). Permit No. 6274195 was issued to Seneca Market as the business establishment using the sign and a tenant of the building. The available record suggests that Seneca Market remains the building establishment using the sign and a tenant of the building to which the sign is attached and there is no evidence that the sign has changed in area from the configuration described in Permit No. 6274195. Accordingly, Permit No. 6274195 is still in effect.
3. The Code does not prohibit or prevent the continuance of existing development standard nonconformities where the nonconformity is not expanded or extended (Finding of Fact No. 11). For example, a house nonconforming to development standards with respect to side yard setback requirements is allowed to remain, even if a new owner purchases the house. The Code contemplates the continuance of nonconformity to development standards where the nonconformity has been maintained and has not been expanded or extended. Otherwise, Section 23.42.112.A would not be needed to ensure that such nonconformities were properly regulated. If the on-premises sign is reduced in size, any future permit will be limited to the reduced area size. If the sign is removed entirely, any future permit will be limited to the area maximum in the Code that is in existence at the time of the new permit application.
4. Seneca Market's on-premises sign is nonconforming to development standards because it exceeds the current maximum area requirement of 672 square feet for on-premises wall signs in the DMC zone. A new business establishment may obtain a permit for the sign and maintain the was sign size as provided in Permit No. 6274195 as long as the sign has not been removed from its location or reduced in size before the new business has submitted its on-premises wall sign application and the new business establishment is a business located on the lot where the sign is located

Decision

The on-premises sign on the southeast wall of the building at 1214 1st Avenue was established as an on-premises wall sign by Permit No. 6274195 and the sign area has not changed since it was constructed. Because Ordinance 124457 was adopted after the sign on the southeast wall was permitted, the sign is nonconforming to the area standard of 672 square feet. The on-premises sign may be maintained at its current size by a new business establishment as long as the sign has not been removed or reduced in size prior to the submission of the application by the business and the new business establishment is located on the lot where the sign is located.

Entered this 1st day of February, 2016.

Signature on File _____

David G. Graves, Senior Land Use Planner
Department of Planning and Development